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8 Attorney for Plaintiff

9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 TODD SCHWEIHS,

12 Plaintiff,

13 vs.

14 CREDITORS DISCOUNT & AUDIT CO.,

15 Defendant.

Case No.: '16CV1402 L BLM

COMPLAINT

DEMAND FOR JURY TRIAL

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21 **INTRODUCTION**

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23 1. This is an action for actual damages, statutory damages, attorney fees and costs brought  
24 by an individual consumer, TODD SCHWEIHS, (hereinafter PLAINTIFF) for violations by  
25 CREDITORS DISCOUNT & AUDIT CO. (Hereinafter DEFENDANT) of the Fair Debt Collection  
26 Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt  
27 Collection Practices Act, *California Civil Code* § 1788 *et seq.* (hereinafter Rosenthal Act"), both of  
28 which prohibit debt collectors from engaging in abusive, deceptive and unfair practices.



1           10. Defendant in the ordinary course of business, regularly, on behalf of themselves, or  
2 others, engages in debt collection as that term is defined by 15 U.S.C. § 1692a(6) of the FDCPA and  
3 Cal. Civil Code §1788.2(c) of the Rosenthal Act.

4           11. Defendant Creditors Discount & Audit Co. is an Illinois entity with a corporate office  
5 address of 415 East Main Street, Streator, IL 61364.

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7 **FACTUAL ALLEGATIONS**

8           12. Prior to November 12, 2013, Plaintiff allegedly became delinquent in the payment on a  
9 debt allegedly owed to Pronger Smith Medical Clinic. Plaintiff currently neither admits nor denies that  
10 the alleged debt is valid.

11           13. On or around November 12, 2013, the alleged debt was assigned, placed, or otherwise  
12 transferred to Defendant for collection.

13           14. On or about March 3, 2016, Defendant called Plaintiff on his cellular telephone at 7:31  
14 a.m. Pacific Standard Time, and continued to call Plaintiff repeatedly prior to 8:00 a.m. Pacific  
15 Standard Time. Plaintiff advised Defendant that it was prior to 8:00 a.m. and instructed Defendant to  
16 stop calling him so early.

17           15. Despite Plaintiff instructing Defendant to stop contacting him so early, on or about  
18 March 19, 2016, Defendant called Plaintiff again on his cellular telephone at 7:33 a.m. Pacific  
19 Standard Time.

20           16. On or about March 26, 2016, Defendant sent a collection letter to Plaintiff at his  
21 address located in San Diego, CA (Exhibit 1). This action indicates the Defendant had constructive  
22 and actual notice that Plaintiff resided in the Pacific Time zone, and thus indicates that Defendant's  
23 inappropriate actions were undertaken knowingly.

24           17. On or about April 9, 2016, despite Plaintiff instructing Defendant to stop contacting  
25 him prior to 8:00 a.m. Pacific Standard Time, Defendant called Plaintiff on his cellular telephone  
26 again at 7:26 a.m. Pacific Standard Time.



**SECOND CLAIM FOR RELIEF**

**(Claim for violations of the Rosenthal Act)**

25. Plaintiff repeats, re-alleges, and incorporates by reference all the allegations contained in the paragraphs above.

26. Defendant's acts and omissions violated the Rosenthal Act including, but not limited to Cal. Civil Code §1788.17. Defendant's violations of Cal. Civil Code § 1788.17 of the Rosenthal Act (which incorporates provisions of the FDCPA) include, but are not limited to those enumerated in paragraph 23 above.

27. Defendant's violations of the Rosenthal Act were willful and knowing, thereby entitling Plaintiff to statutory damages pursuant to Cal. Civil Code § 1788.30(b) of the Rosenthal Act.

28. As a proximate result of the violations of the Rosenthal Act committed by Defendant, Plaintiff is entitled to any actual damages, statutory damages, reasonable attorney's fees and costs of this action.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and for Plaintiff, and pray for the following relief:

1. An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) of the FDCPA against Defendants and each of them;

2. An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A) of the FDCPA against Defendant;

3. An award of actual damages pursuant to Cal. Civil Code § 1788.30(a) of the Rosenthal Act, against Defendant;

4. An award of statutory damages of \$1,000.00 pursuant to Cal. Civil Code § 1788.30(b) of the Rosenthal Act against Defendant.

5. An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. §1692k (a)(3) of the FDCPA against Defendant, and Cal. Civil Code § 1788.30(c) of the Rosenthal Act, against Defendant.

1                   6.       Such other and further relief this court may deem just and proper.  
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3   **TRIAL BY JURY**

4                   Pursuant to the seventh amendment to the Constitution of the United States of America,  
5 Plaintiff is entitled to, and demands, a trial by jury.  
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8 Dated June 8, 2016

Luftman, Heck and Associates  
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